

Federal Register

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Part VI

Environmental Protection Agency

**40 CFR Parts 35 and 130
Water Quality Planning and Management;
Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 35 and 130****[OW-FRL-2633-3]****Water Quality Planning and Management****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has revised the regulation governing the water quality planning and management activities outlined in sections 106, 205(g), 205(j), 208, 303 and 305 of the Clean Water Act (CWA). These are the activities that set State water quality goals and standards and which lead to regulatory, construction and other water quality management programs that accomplish the State's clean water goals. In response to criticisms that the existing regulation and resultant planning efforts were too complex and broad, EPA has simplified and shortened this regulation and has provided States and local governments with increased flexibility to operate their programs, while assuring that the basic requirements of the CWA are satisfied.

DATE: This rule is effective February 11, 1985.

ADDRESS: Comments received on the proposed regulation may be inspected at the Environmental Protection Agency, Room 945 East Tower, 401 M Street, S.W., (WH-586) Washington, D.C. 20460, (202) 382-7160.

FOR FURTHER INFORMATION CONTACT: Edward Richards, Chief, Water Quality Management Branch (202) 382-7160.

SUPPLEMENTARY INFORMATION: This regulation, 40 CFR Part 130, Water Quality Planning and Management, replaces 40 CFR Part 35, Subpart G, Grants for Water Quality Planning, Management and Implementation. Today's final regulation emphasizes the basic planning and management requirements of the CWA. The thrust of the CWA is to manage water quality. This regulation assures that State and local government programs lead to control measures. In developing the final regulation, EPA simplified and clarified program requirements to ensure that State, areawide, interstate, local and regional water quality agencies can implement individually effective water quality programs focused on priority issues and areas. Today's final regulation also recognizes that water quality agencies must properly manage and account for Federal funds and

document improvements in water quality.

Approach: The Water Quality Management (WQM) program under sections 106, 205(g), 205(j), 208, 303, and 305 of the CWA sets out the planning and management activities to be undertaken by States and local governments to establish their water quality goals and standards and to develop programs which will meet those goals. Activities addressed by this regulation are discussed below.

Water quality standards (WQS)—WQS define the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Act. Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of treatment controls and strategies beyond the technology-based levels of treatment required by sections 303(b) and 306 of the Act.

Water quality monitoring—Water quality monitoring information utilizing chemical, physical and biological data for surface and ground-waters enables States and EPA to assure that environmental control decisions and priorities are based on sound scientific data. EPA encourages States to improve the quality of information available for water quality decisions and encourages the active involvement of State and local governments, dischargers and the public in developing cooperative monitoring efforts. Monitoring data provides information for adopting site-specific water quality standards; developing abatement and control requirements, including wasteload allocations/load allocations (WLAs/LAs) and total maximum daily loads (TMDLs); measuring water quality trends at the local, State and national level; and assessing WQM program performance.

Continuing Planning Process (CPP)—Section 303(e) of the Act requires each State to have a CPP. The CPP describes the processes used by the State in making water quality decisions. The regulation does not require a single CPP document but emphasizes the importance of effective processes which contribute to managing the implementation of water quality controls. Each State must review and update, as necessary, its CPP processes to meet its needs and the requirements of this regulation.

WQM plans—WQM plans provide a framework for managing water quality

on an ongoing basis. WQM plans consist of initial plans completed by State or areawide water quality agencies in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. WQM plans should identify point and nonpoint sources of pollution, consider alternative solutions and recommend control approaches and programs, including the financial and institutional measures, necessary for implementing the recommended solutions. In considering best management practices (BMPs) for the control of pollution from nonpoint sources, States should evaluate the costs of installing and implementing BMPs. It is expected that States will select and implement BMPs that have water quality, environmental and other benefits which exceed implementation costs. Continuing planning activities should focus on priority issues and water bodies. State work programs for CWA grant funds should reflect the priority activities identified in the State WQM plan.

To assure that WQM plans continue to provide effective frameworks for management, State and/or areawide plans shall be updated as needed to reflect changing water quality conditions, results of implementation activities, new requirements or to remove conditions in prior plan approvals. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan.

Total maximum daily loads (TMDLs)—TMDLs are important elements of WQM plans. Section 303(d) of the CWA requires each State to develop TMDLs for each water body that cannot meet water quality standards after point sources are controlled to prescribed technology-based levels. Once a TMDL has been completed, a wasteload allocation or load allocation (WLA/LA) for that TMDL forms the basis for permit limitations for individual dischargers.

The TMDL process assigns margins of safety, distributes treatment burdens and considers nonpoint source controls. TMDLs may be established using a pollutant by pollutant approach based on mathematical modeling or a biomonitoring approach using bioassays or biosurveys. In many cases, EPA believes both approaches will be needed. EPA has determined that under proper technical conditions TMDLs can be calculated for all pollutants (see 43 FR 60662, December 28, 1978).

Although section 303(d)(2) of the Act does not specifically mention either WLAs or LAs, it is impossible to evaluate whether a TMDL is technically sound and whether it will be able to achieve standards without evaluating component WLAs and LAs and how these loads were calculated. Thus, it is necessary for EPA to review and approve or disapprove a TMDL in conjunction with component WLAs and LAs.

Section 303(d)(1) of the Act requires each State to "identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters," to establish TMDLs for these waters, and to submit them to EPA for approval. A strict interpretation of this section would mean that States would have to establish TMDLs for all waters where best practicable control technology currently available (BPT) and second treatment are not adequate to meet applicable WQS. However, those waters include a number of waters where other legally required pollution controls are sufficient to ensure compliance with WQS.

Such examples include best available technology economically achievable (BAT), new source performance standards, pretreatment standards, State or local effluent limitations more stringent than BPT and secondary treatment (under authority reserved by section 510 of the Act), and other required pollution controls, including best management practices (BMP) for nonpoint sources required by local, State, or Federal authority. Under such circumstances, establishing TMDLs would not contribute to accomplishing the goals of the Act and could draw resources from areas where there are water quality problems. Therefore, EPA believes it best serves the purposes of the Act to require States to establish TMDLs and submit them to EPA for approval only where such TMDLs are needed to "bridge the gap" between existing effluent limitations, other pollution controls and WQS. TMDLs would be estimated, rather than established, for those waters not covered by this interpretation, in accordance with section 303(d)(3) of the Act. States must continue to submit all TMDLs and WLAs/LAs established for water quality limited segments to EPA for review and approval.

EPA expects States to assign priorities as required by section 303(d) of the Act to water quality limited segments that need new or updated TMDLs and to

develop TMDLs and WLAs/LAs according to CWA requirements and individual water quality goals. Such priorities must consider uses of waters and the severity of the pollution. Priorities may also take into account such factors as the need to refine National Pollution Discharge Elimination System (NPDES) permit limits and pending construction grant decisions.

Section 305(b) report—Section 305(b) of the Act requires States to report biennially to EPA on the status of the quality of their waters and the programs underway or needed to attain water quality goals. States may also include ground-water status and quality in the 305(b) report. The 305(b) report serves as the State's primary problem assessment and directs continuing planning and implementation activities. This report must include recommendations on current and future program activities needed to address problems in priority areas. The reports also form the basis for the National Water Quality Inventory Report to Congress. EPA is expecting the States to use water quality measures derived through the "States Evaluation of Progress under Clean Water Program (STEP)" project and additional information noted in the STEP project recommendation as the baseline in their 305(b) reports to improve the comparability of the reports for formulating the Inventory. The additional information requested in the recommendation includes basin/segment summaries and toxic information and other items agreed upon between the State and EPA Region. The final regulation affords States the opportunity to utilize the section 305(b) report to meet the reporting requirements of section 205(j).

Ground-water—The proposed regulation allowed States to address ground-water issues as part of their WQM process. Since proposing this regulation, EPA developed a ground-water protection strategy which recognizes that States are primarily responsible for comprehensive protection of ground-water and encourages development of State ground-water strategies and ground-water plans and programs. This regulation, however, does not require a mandatory State ground-water plan or program and does not require development of a ground-water plan element. States may develop a WQM plan element for ground-water if they so choose. Ground-water plans and programs developed as an element of the WQM plan may be administered in

accordance with the processes for plan development, approval and update provided in this regulation. Because today's regulation imposes no new ground-water requirements, it was not necessary to propose the more detailed ground-water references prior to today's final promulgation. However, EPA requests comments on the inclusion of ground-water planning (other than nonpoint source planning) in the water quality management process outlined in the final rule.

WQM funding—Funding to States to support these activities is available under sections 106, 205(j) and 205(g) of the Act. Statutory eligibilities are described in "Financial Assistance for Continuing Environmental Programs," 40 CFR Part 35, Subpart A. Section 106 funding is available for a broad range of activities, while eligibilities under 205(j) and non-construction management eligibilities under 205(g) are limited to a narrower range of activities.

Annual work program—The work program is the State's key annual management document for performance of grant activities and is more than an agreement for the transfer of grant funds between EPA and the States. The work program describes a State's geographic priorities and activities for the coming year and should reflect the problem assessment and priorities of the 305(b) report and WQM plan. The work program outlines expected accomplishments in all program areas, including permits and enforcement, and is the basis of EPA overview and State accountability for grant funds. EPA encourages States to develop one work program for 106, 205(j) and nonconstruction management 205(g) funds and encourages areawide, local and regional planning agencies to participate actively in the development of work program activities related to the use of section 205(j) funds.

Response to Comments

Our responses to the 71 written comments received on specific features of the proposed regulation follow.

1. Priority water bodies and priorities—The proposed regulation did not contain a definition of the term priority water bodies. Eight commenters requested clarification of the term. Some had confused priority water bodies with the priority ranking of water quality limited segments needing TMDLs or asked how priority water body lists have impacts on construction grants, permit and enforcement activities.

The term "priority water bodies" is a management concept originated by EPA to encourage States to focus resources

and control activities in areas where water quality decisions are needed. States are encouraged to identify priority water bodies—those waters for which regulatory or water quality control decisions are needed. State priority water body lists should provide an overall agenda of needed control actions and may include waters not meeting standards, as well as waters where controls are needed to maintain uses. Other priority setting mechanisms, such as the construction grants list and the list of water quality limited segments requiring TMDL analysis, should be consistent with, but will probably not be identical to, the priority water body list.

Since the CWA does not require States to develop a general priority water body list, this regulation does not require States to develop a list of priority water bodies. We do expect, though, that States will find it useful to develop a priority water body list as the primary determinant for establishing State pollution control priorities in response to their most significant water quality problems. States may use this list to coordinate construction grants, planning and standards, monitoring, permit and enforcement program activities.

The priority ranking of segments needing TMDL calculations required under section 303(d) of the Act and section 130.5(b)(1) of this regulation is not the same as the priority water body list. The section 303(d) ranking reflects the priority with which the States intend to complete TMDLs for specified segments.

2. Definitions—One commenter recommended that the definition of TMDL be revised to allow States to establish TMDLs for specific pollutants, expressed as a limitation averaged over an other than daily time period appropriate to the specific pollutant and environmental conditions. We are aware of the need for water quality-based effluent limitations which provide appropriate limits on the average mass of pollutant discharged per unit time period. Therefore, TMDLs and water quality-based effluent limitations may be expressed in terms of an appropriate averaging period, such as weekly or monthly, as long as compliance with applicable WQS is assured.

One commenter suggested that the definition of TMDL was not clear because referring to "total loadings of pollutants" implies that a TMDL should cover several pollutants. We revised the definition to clarify that a single TMDL covers only one specific pollutant or one property of pollution, for example, acidity, biochemical oxygen demand, radioactivity, or toxicity. Thus, more

than one TMDL may be required for a segment where there may be violations of more than one criterion in the applicable WQS.

A number of commenters recommended that the regulation define what is meant by WLA. We have included definitions of WLA, which applies to point sources and LA, which applies to other sources.

One commenter suggested that the regulation should define the term "navigable waters". To avoid we have substituted the term "waters of the United States," which is the Act's definition of "navigable waters" and which is further defined in other regulations (e.g., 40 CFR 122.2).

One commenter suggested that the definition of BMP be made consistent with the definition in the previous WQM regulation since that definition is now generally accepted and used. We have revised the definition accordingly.

3. Water Quality Standards (WQS)—One commenter suggested that the fact that water quality standards are the State's water quality goals be reflected in the language of the regulation. We have revised the regulation to state that WQS are the water quality goals of a water body, or portion thereof, as well as the legal basis for control decisions required by the CWA.

Other commenters raised questions beyond the purview of the Water Quality Planning and Management regulation related to setting and attaining interstate water quality standards, site-specific criteria development and the public's role in use classification. We refer commenters to the final Water Quality Standards regulation, 40 CFR Part 131, 48 FR 51400, November 8, 1983, for answers to these questions.

4. Water monitoring—Two commenters noted that data collected through cooperative monitoring programs or data submitted by industry must be checked "carefully and thoroughly" for accuracy.

We emphasize that data collection efforts must be based on agreed upon scientific standards and protocols and that State water quality agencies should be convinced of the validity and accuracy of any data used to implement the water quality program. We recognize that there may be disagreements over data collection and analytical methods as well as interpretation of results. It is important that all parties agree in advance on procedures and methods to be employed in data collection and analysis.

One commenter questioned what strategy was referred to in section 130.4(b). The language of this paragraph

was revised to clarify that no separate monitoring strategy is required by the regulation and that the monitoring activities referred to are the State's ongoing monitoring activities required by section 106(e)(1) of the Act and described in the annual State work program.

5. Continuing planning process—Two commenters suggested that the regulation prescribe the delegation of CPP functions to designated areawide agencies and emphasize joint State and area-wide development of CPPs. We have not made this change since section 303(e)(2) of the CWA expressly requires States to develop a CPP. We do recommend, though, that as CPPs are developed, State agencies consult with areawide agencies to be sure that updated CPPs accurately reflect water quality conditions and existing institutional responsibilities for water quality management. EPA will evaluate the effectiveness of CPP procedures during its regular annual review of State WQM programs.

6. Water quality management plans—One commenter noted that the format of the WQM plan section seemed to de-emphasize the significance attributed to the effects of nonpoint sources. This was not the intent. We have rewritten the WQM plan section to state that plans should continue to develop, recommend and guide implementation of solutions to nonpoint source pollution problems.

Two commenters noted that annual certification of WQM plans by the Governor or the Governor's designee is not necessarily productive and that the annual certification requirement is excessive. The final regulation requires an as needed, rather than an annual plan certification requirement. These updates need only to involve elements of the plan that require modification due to changes in water quality conditions, new requirements or proposed control measures. The Governor or Governor's designee must certify that any updates are consistent with the remainder of the plan. EPA will consider the last certified and approved plan elements to be in effect.

One commenter noted that the procedure for designation of management agencies in the proposed regulation departed from requirements in the previous regulation that designated management agencies (DMA) be recommended in WQM plans and certified by the Governor. We have revised the regulation to clarify that DMAs should continue to be recommended in WQM plans and certified by the Governor or his designee.

in accordance with plan recommendations.

One commenter objected to inclusion in the plan of the identification of municipal and industrial waste treatment needs, establishment of construction priorities and schedules of completion of these treatment works. We have not changed this provision because section 208(b)(2)(A) of the Act requires this information in WQM plans and we believe that this provision is an important component of the plan.

The commenter asked why the proposed regulation included instructions to both areawide and State water quality agencies. This comment appears to be based on the assumption that all areawide WQM plans have been incorporated into State WQM plans. We recognize that some areawide WQM plans will be or are already incorporated into State WQM plans. This, however, is not always the case, and we think that State and areawide agencies are able to determine the most individually effective institutional planning arrangements. In some cases this may result in a consolidated State WQM plan, while in others separate State and areawide plans may be maintained.

We emphasize the flexibility of State and areawide WQM agencies to develop effective planning and management relationships and stress the importance and utility of continued areawide and local planning efforts. It is, however, still the responsibility of the State to assure that State and areawide plans together include all necessary elements for all geographic areas of the State.

One commenter was concerned that the annual WQM plan certification requirement could result in delays in using new or updated wasteload allocations to issue permits because the WLAs would only be incorporated once a year. We believe that the approach taken by the regulation will avoid delays in using new or updated wasteload allocations. Under the statute, when EPA approves a TMDL submitted to it under section 303(d), the TMDL is to be automatically incorporated into the State's WQM plan. The regulation treats this submittal and approval as the equivalent of a WQM plan update certification and approval. Consequently, approved TMDL's will be immediately effective for NPDES permit and WQM plan consistency determinations as required by section 208(e).

One commenter noted that regulatory nonpoint source programs are not prohibited if States determine they are an effective way of dealing with a nonpoint source pollution. We agree.

The regulation does not prohibit the use of State regulatory programs for nonpoint source control.

One commenter noted that the proposed regulations allowed Regional Administrators discretionary authority over self-designation applications by Indian tribal organizations and also provided for prior EPA consultation with the State before approving such tribal applications. The commenter thought this was contrary to the principles of tribal self-determination and tribal management. EPA supports tribal self-determination and does not agree that the proposed regulation is contrary to this principle in intent or effect. The regulation simply provides for consultation with States on the specific questions of State assertions of jurisdiction over Indian lands. Where the Regional Administrator, following such consultation, makes a determination as a matter of Federal law that a State lacks jurisdiction over Indian lands, he or she is authorized to approve subsequent tribal self-designation applications in that State. The approval of tribal self-designation applications is fundamentally a Federal matter in which EPA affirms the authority of Indian tribal organizations to conduct water quality management planning on reservation areas as long as the requirements of the CWA are met.

Two commenters noted that Indian tribal water quality efforts would be greatly improved by the provision of direct EPA funding for these efforts. We cannot do so because the lack of direct EPA funding for Indian tribal organizations stems from the statutory funding eligibilities of sections 106 and 205(j) of the Act.

7. Total maximum daily loads.—The proposed regulation included alternatives for meeting the statutory TMDL review and approval requirements. Based upon the comments received, we have concluded that the most efficient way to meet the requirements of section 303(d) of the Act is to tailor the EPA level of review to what is reasonable and appropriate. The majority of commenters supported this approach. Thus, where a State has clearly described its TMDL process in its CPP and EPA has approved the process, EPA may conduct an in-depth review of a sample of the State's WLAa/LAs and TMSLs to determine how well the State is implementing its approved process. States are still required though, to submit all WLAs/LAs and TMDLs established for water quality limited segments to EPA for review and approval in accordance with section 303(d). This sample review, in

conjunction with a less detailed review of all other WLAs/LAs and TMDLs submitted to EPA by the State, will provide a reasonable basis for approving or disapproving individual TMDLs. This detailed sample may include TMDLs supporting major construction grants and other major control measures.

One commenter recommended limiting EPA review of TMDLs to approval of the process for establishing them and to cases where States disagreed on appropriate TMDLs/WLAs/LAs for interstate waters. We have not incorporated this suggestion since section 303(d)(2) of the Act requires EPA to approve or disapprove all TMDLs.

One commenter opposed the alternative under which EPA would review individual WLAs/LAs and TMDLs when they were submitted with permit applications or construction grant applications. The commenter believed WLAs/LAs should be reviewed by EPA as early in the WQM process as possible. We agree that it is preferable for States to establish WLAs/LAs and TMDLs for their waters in advance of NPDES permit or construction grant decisions. However, if a State has many water bodies where new WLAs/LAs and TMDLs are needed, it may have to submit WLAs/LAs to EPA with the permit or construction grant applications.

One commenter pointed out that disapproval of a State's TMDLs without public review or opportunity for defense by the State is not desirable. If a State anticipates that a WLA/LA project will be either critical or controversial, we urge the State to involve the EPA Region and the public in these decisions throughout the WLA/LA and TMDL development process, rather than waiting until State approved WLAs/LAs and TMDLs are submitted to EPA for approval.

One commenter suggested that since TMDLs must be incorporated into WQM plans which must be approved by EPA, a separate EPA review of TMDLs is not necessary. We do not agree since section 303(d)(2) of the Act provides that after TMDLs are approved by EPA, they shall be incorporated into WQM plans. While the Act's requirements may result in two separate reviews, a combined review of proposed TMDLs and related WQM plan elements would be advantageous.

Two commenters advocated establishing pollutant concentration limits. One of them pointed out that a discharger could dump its entire TMDL into a stream within a short period.

perhaps minutes or one hour. Such an action could have a devastating effect on aquatic life. He suggested establishing concentration limits in addition to TMDLs. We agree. If spike discharges are expected to present a water quality problem, permits should impose both mass per day WLA limits and concentration limits on the discharger. EPA regulations, 40 CFR Part 122.63(f)(2), already provide for limiting effluents in terms of pollutant concentrations and this is a common practice in the NPDES permit process.

One commenter suggested it would be helpful to note in the preamble that section 302(b) of the Act provides for adjusting water quality based effluent limitations, based on lack of available technologies or unreasonable economic or social costs. The adjustment procedure in section 302(b) of the Act only applies to effluent limitations established pursuant to section 302 and cannot delay the application of any effluent limitation established under section 301 of the Act. Section 301(b)(1)(C) of the Act requires achievement of any limitation, more stringent than a technology based one necessary to meet water quality standards, including water quality based effluent limitations resulting from a WLA/LA. Such limitations are not affected by section 302.

One commenter suggested that it is not a wise use of scarce resources to establish daily thermal loads in areas where no thermal dischargers are proposed or likely. We agree that States should establish TMDLs according to actual needs and priorities. If total maximum daily thermal loads are not needed to meet water quality standards for certain areas, States should focus their resources on other areas where such loads are needed.

One commenter found the TMDL concept appropriate for very short segments with a minimum number of dischargers, but not for longer segments made more complex by multiple dischargers. We think it is clear from the Act that TMDLs are appropriate wherever effluent limitations are necessary to meet water quality standards, regardless of a segment's length or its number of dischargers. To the extent practicable, segment boundaries should be established to facilitate developing WLAs/LAs and TMDLs.

Two commenters believed that EPA should develop standard methods for biomonitoring prior to allowing their use by the States for establishing TMDLs.

EPA is currently revising existing methodologies and developing a range of additional acceptable methodologies

for biomonitoring. In the meantime, States are encouraged to use available biomonitoring methodologies.

8. *Water quality report*—One commenter suggested that the information called for under §§ 130.8(b)(2), 130.8(b)(3) and 130.8(b)(4) of the regulation would more appropriately be included in the WQM plan rather than the water quality report required under section 305(b) of the CWA. Section 305(b)(1)(A-E) of the CWA, however, requires the information specified in the referenced sections of the regulation. We also note that the regulation deletes the requirement for a duplicative problem assessment for WQM plans and emphasizes the role of the section 305(b) report as the primary water quality problem assessment document under the Act. The WQM plan may reference the problem assessment in the 305(b) report or may contain additional information which supplements the 305(b) report.

One commenter asked why the 305(b) report certification could not satisfy the annual section 205(j) CWA report requirement. This question indicates some confusion as to the intent of section 130.8(c) of the regulation. We have changed the regulation to clarify that the annual section 205(j) CWA report requirement can be satisfied by the biennial section 305(b) report, supplemented in the off year by a State certification that the most recently submitted section 305(b) report reflects current water quality conditions. If the most recently submitted section 305(b) report no longer portrays current water quality conditions, then the State need update only those portions which are no longer accurate. States may wish to submit the water quality report or certification with the annual work program.

Finally, language has been added to the regulation encouraging States to include information on the status and quality of ground-water in the 305(b) report.

9. *Resources*—Three commenters suggested that the regulation should reflect the scarcity of Federal and State resources available to conduct the activities specified in the regulation. We believe it does. Given that available resources for all the partners in the water quality process are limited, we encourage State, areawide, interstate, local and private sources to focus their activities on priority issues and water bodies.

One commenter requested that the specific types of funding EPA is considering to assist the States in the water quality planning process be identified. Available funds are those

appropriated annually under sections 106, 205(g) and 205(j) of the CWA.

Specific funding eligibilities and grant administrative requirements for these funds are contained in the 40 CFR Part 35, Subpart A, Financial Assistance for Continuing Environmental Programs regulation.

10. *Public Participation*—Seven commenters noted that the proposal did not stress public involvement in the water quality management process. The water quality management process remains subject to the provisions of the 40 CFR Part 25 Public Participation regulation.

11. *Program Summary*—A number of commenters noted that the proposed regulation did not adequately explain how the components of the WQM program related to one another. Without these relationships it was difficult to understand how the various activities interact to result in a focused, effective WQM program. We have responded to this comment by adding a new section outlining the significance of the annual work program and language to the 305(b) and WQM plan sections stressing their relationship to the annual work program. Finally, we have put the sections of the regulation into a more logical sequence so that the discussion follows the WQM process.

Regulation Development

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an adverse effect on the economy or large numbers of individuals or businesses. The final rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2040-0071, 2040-0049 and 2010-0004.

Regulatory Flexibility Act

EPA has determined that these revisions to 40 CFR Part 35, Subpart G, will not have a significant impact on a substantial number of small entities. These revisions will reduce administrative burdens on Federal, State and local governments.

Since EPA's water quality planning and management program deals primarily with State water quality

agencies, it does not have a direct effect on small entities.

List of Subjects

40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians. Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 130

Water pollution control, Environmental Protection.

Dated: January 4, 1985.

William D. Ruckelshaus,
Administrator.

PART 35—[AMENDED]

For the reasons set out in the preamble, Part 35 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority cite for Part 35 reads as follows:

Authority: Sec. 501(a), Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

§§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4 [Removed]

2. Part 35 is amended by removing §§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4.

3. 40 CFR Chapter I is amended by adding a new Part 130, reading as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

- Sec.
- 130.0 Program summary and purpose.
 - 130.1 Applicability.
 - 130.2 Definitions.
 - 130.3 Water quality standards.
 - 130.4 Water quality monitoring.
 - 130.5 Continuing planning process.
 - 130.6 Water quality management plans.
 - 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.
 - 130.8 Water quality report.
 - 130.9 Designation and de-designation.
 - 130.10 State submittals to EPA.
 - 130.11 Program management.
 - 130.12 Coordination with other programs.

Authority: 33 U.S.C. 1251 *et seq.*

§ 130.0 Program summary and purpose.

(a) This subpart establishes policies and program requirements for water

quality planning, management and implementation under sections 106, 205(j), non-construction management 205(g), 208, 303 and 305 of the Clean Water Act. The Water Quality Management (WQM) process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual programs. The process is implemented jointly by EPA, the States, interstate agencies, and areawide, local and regional planning organizations. This regulation explains the requirements of the Act, describes the relationships between the several components of the WQM process and outlines the roles of the major participants in the process. The components of the WQM process are discussed below.

(b) Water quality standards (WQS) are the State's goals for individual water bodies and provide the legal basis for control decisions under the Act. Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters. The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act.

(c) This report and other assessments of water quality are used in the State's WQM plans to identify priority water quality problems. These plans also contain the results of the State's analyses and management decisions which are necessary to control specific sources of pollution. The plans recommend control measures and designated management agencies (DMAs) to attain the goals established in the State's water quality standards.

(d) These control measures are implemented by issuing permits, building publicly-owned treatment works (POTWs), instituting best management practices for nonpoint sources of pollution and other means. After control measures are in place, the State evaluates the extent of the resulting improvements in water quality, conducts additional data gathering and planning to determine needed modifications in control measures and again institutes control measures.

(e) This process is a dynamic one, in which requirements and emphases vary over time. At present, States have completed WQM plans which are generally comprehensive in geographic and programmatic scope. Technology based controls are being implemented for most point sources of pollution.

However, WQS have not been attained in many water bodies and are threatened in others.

(f) Present continuing planning requirements serve to identify these critical water bodies, develop plans for achieving higher levels of abatement and specify additional control measures. Consequently, this regulation reflects a programmatic emphasis on concentrating planning and abatement activities on priority water quality issues and geographic areas. EPA will focus its grant funds on activities designed to address these priorities. Annual work programs negotiated between EPA and State and interstate agencies will reflect this emphasis.

§ 130.1 Applicability.

(a) This subpart applies to all State, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management (WQM) plans developed under sections 208 and 303 of the Act.

(b) Planning and management activities undertaken prior to February 11, 1985 are governed by the requirements of the regulations in effect at the time of the last grant award.

§ 130.2 Definitions.

(a) *The Act.* The Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

(b) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(c) *Water quality standards (WQS).* Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(d) *Load or Loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

(e) *Loading capacity.* The greatest amount of loading that a water can receive without violating water quality standards.

(f) *Load allocation (LA).* The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best

estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(g) *Wasteload allocation (WLA)*. The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(h) *Total maximum daily load (TMDL)*. The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of the point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(i) *Water quality limited segment*. Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

(j) *Water quality management (WQM) plan*. A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(k) *Area agency*. An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(l) *Best Management Practice (BMP)*. Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

(m) *Designated management agency (DMA)*. An agency identified by a WQM plan and designated by the Governor to

implement specific control recommendations.

§ 130.3 Water quality standards.

A water quality standard (WQS) defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States and EPA adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (CWA). "Serve the purposes of Act" (as defined in section 101(a)(2) and 303(c) of the Act) means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in and on the water, and agricultural, industrial and other purposes including navigation. Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of water quality-based treatment controls and strategies beyond the technology-based level of treatment required by sections 301(b) and 306 of the Act. States shall review and revise WQS in accordance with applicable regulations and, as appropriate, update their Water Quality Management (WQM) plans to reflect such revisions. Specific WQS requirements are found in 40 CFR Part 131.

§ 130.4 Water quality monitoring.

(a) In accordance with section 106(e)(1), States must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters.

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report

and reviewing site-specific monitoring efforts.

§ 130.5 Continuing planning process.

(a) *General*. Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A-H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content*. The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. The following processes must be described in each State CPP, and the State may include other processes at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306 and section 307, and at least as stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and § 130.7(a) of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review*. The Regional Administrator shall review

approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.6 Water quality management plans.

(a) *Water quality management (WQM) plans.* WQM plans consist of initial plans produced in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. Continuing water quality planning shall be based upon WQM plans and water quality problems identified in the latest 305(b) reports. State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Water quality planning directed at the removal of conditions placed on previously certified and approved WQM plans should focus on removal of conditions which will lead to control decisions.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total maximum daily loads.* TMDLs in accordance with sections 303(d) and 303(e)(3)(C) of the Act and § 130.7 of this Part.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.5 of this Part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial

arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.*

(i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)-(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(I) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance

expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in § 130.6(c) (4)(iii)(A)(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.*

Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A-I) of the Act.

(6) *Implementation measures.*

Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.*

Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Planning on Indian lands.* (1) To the extent feasible, States and areawide agencies shall coordinate with Indian tribal organizations within and adjacent to their planning areas in the development of water quality management (WQM) plans. Where appropriate, the Regional Administrator shall work with the State and Indian tribal organization to ensure development of WQM planning on Indian lands. The WQM planning area must include all lands within the reservation regardless of ownership.

(2) Where the Regional Administrator, after consultation with the State, determines that a State lacks authority to carry out effective WQM planning and implementation on Indian lands, the Regional Administrator may approve a self-designation application by an Indian tribal organization under section 208(a)(4) of the Act if the Indian tribal organization has the authority and capability to undertake effective WQM planning. After receipt of such a designation, the Indian tribal organization becomes responsible for developing and maintaining a WQM plan in accordance with sections 208 and 303 of the Act and section 130.6 of this Part.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved

WQM plans as described in § 130.12(a) and 130.12(b).

§ 130.7 Total maximum daily loads (TMDLs) and individual water quality-based effluent limitations.

(a) *General.* The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAS/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAS/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality limited segments still requiring WLAs/LAs and TMDLs.

(1) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs within its boundaries for which:

(i) technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) more stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (e.g., law, regulation, or treaty); and

(iii) other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority

are not stringent enough to implement any water quality standard (WQS) applicable to such waters. The State shall establish a priority ranking for such water quality limited segments still requiring WLAs/LAs and TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the water quality standards.

(2) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(c) *Development of TMDLs and individual water quality based effluent limitations.*

(1) Each State shall establish WLAs/LAs and TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, WLAs/LAs and TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of WLAs/LAs and TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section.

Calculations to establish WLAs/LAs and TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the water quality limited segments still requiring WLAs/LAs and TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) *Submission and EPA approval.* (1) Each State shall submit to the Regional Administrator from time to time for approval the listing of water quality limited segments requiring WLAs/LAs and TMDLs identified under paragraph (b) of this section. All WLAs/LAs and TMDLs established under paragraph (c)

for water quality limited segments shall continue to be submitted to EPA for review and approval. Schedules for submission of WLAs/LAs and TMDLs shall be determined by the Regional Administrator and the State.

The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the listing and loads to the State, which shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resources allow, each State shall identify all segments within its boundaries which it has not identified under paragraph (b) of this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife. However, there is no requirement for such loads to be submitted to EPA for approval, and establishing WLAs/LAs and TMDLs for those waters identified in paragraph (b) of this section shall be given higher priority.

§ 130.8 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified

in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act.

(b) Each such report shall include but is not limited to the following:

(1) A description of the water quality of all waters of the United States and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water.

(2) An estimate of the extent to which CWA control programs have improved water quality or will improve water quality for the purposes of section 1 above and recommendations for future actions necessary and identifications of waters needing action.

(3) An estimate of the environmental, economic and social costs and benefits needed to achieve the objectives of the CWA and an estimate of the date of such achievement.

(4) A description of the nature and extent of nonpoint source pollution and recommendations of programs needed to control each category of nonpoint sources, including an estimate of implementation costs.

(c) States may include a description of the nature and extent of ground-water pollution and recommendations of State plans or programs needed to maintain or improve ground-water quality.

(d) In the years in which it is prepared the biennial section 305(b) report satisfies the requirement for the annual water quality report under section 205(j). In years when the 305(b) report is not required, the State may satisfy the annual section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the sections of the most recently submitted section 305(b) report which require updating.

§ 130.9 Designation and de-designation.

(a) Designation—Areawide planning agencies may be designated by the Governor in accordance with section 208(a)(2) and (3) of the Act or may self-designate in accordance with section 208(a)(4) of the Act. Such designations shall be subject to EPA approval in accordance with section 208(a)(7) of the Act.

(b) De-designation—The Governor may modify or withdraw the planning

designation of a designated planning agency other than an Indian tribal organization self-designated § 130.6(c)(2) if:

(1) The areawide agency requests such cancellation; or

(2) the areawide agency fails to meet its planning requirements as specified in grant agreements, contracts or memoranda of understanding; or

(3) the areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) Impact of de-designation—Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) Designated management agencies (DMA)—In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

§ 130.10 State submittals to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report; (Approved by OMB under the control number 2040-0071)

(2) The annual State work program(s) under sections 106 and 205(j) of the Act; and (Approved by OMB under the control number 2010-0004)

(3) Revisions or additions to water quality standards (WQS) (303(c)). (Approved by OMB under 2040-0049)

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification and a ranking by priority of water quality limited segments (303(d));

- (3) Total maximum daily loads (TMDLs) (303(d)); and
 (4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)).
 (Subsection (b)(1)(4) approved by OMB under the control number 2010-0004).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this Part and, where applicable, 40 CFR Parts 29, 30, 33 and 35, Subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

§ 130.11 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR Parts 25, 29, 30, 33 and 35, Subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see Part 35, Subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction program pursuant to the provisions of 40 CFR 35, Subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4) and to manage waste treatment

construction grants for small communities.

(c) Grant work programs for water quality planning and management shall describe geographic and functional priorities for use of grant funds in a manner which will facilitate EPA review of the grant application and subsequent evaluation of work accomplished with the grant funds. A State's 305(b) Report, WQM plan and other water quality assessments shall identify the State's priority water quality problems and areas. The WQM plan shall contain an analysis of alternative control measures and recommendations to control specific problems. Work programs shall specify the activities to be carried out during the period of the grant; the cost of specific activities; the outputs, for example, permits issued, intensive surveys, wasteload allocations, to be produced by each activity; and where applicable, schedules indicating when activities are to be completed.

(d) State work programs under sections 106, 205(j) and 205(g) shall be coordinated in a manner which indicates the funding from these grants dedicated to major functions, such as permitting, enforcement, monitoring, planning and standards, nonpoint source implementation, management of construction grants, operation and maintenance of treatment works, ground-water, emergency response and program management. States shall also describe how the activities funded by these grants are used in a coordinated manner to address the priority water quality problems identified in the State's water quality assessment under section 305(b).

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate

with State and local priorities. State work programs under section 205(j) shall be developed jointly with local, Regional and other comprehensive planning organizations.

§ 130.12 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan. Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

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